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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,172	10/05/2000	Remi Swierczek	5713-2	8130

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EXAMINER

GART, MATTHEW S

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/680,172

Applicant(s)

SWIERCZEK, REMI

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/5/00 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Drawings

This application has been filed with informal drawings, which are acceptable for examination purposes only. Figures 1 through 6 contain improper hand written text, which may affect clarity when reproduced.

Applicant is required to submit a formal correction of the noted defect. Applicant is required to submit drawing corrections promptly. Drawing objections may no longer be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3, 5, and 10-19 are rejected under 35 U.S.C. 102(a) as being anticipated by Pocock U.S. Patent No. 6,314,577.

Referring to claims 1 and 10. Pocock discloses a method for purchasing a recorded music item (at least column 1, lines 9-27, "The present invention relates generally to a method and apparatus to enable a broadcast listener to automatically purchase a music product such as a record album, cassette tape or compact disk...") comprising the following steps:

- a) Recording data related to a music item playing on a radio (at least column 1, lines 9-27, "...a digitally stored audio database containing the names of

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musical artists and groups, the names of pieces which have been recorded on the musical products, musical excerpts of these pieces, and a telephone system to replay this descriptive information through a telephone connection to a potential purchaser”);

- b) Transmitting said data to a music identification/purchasing system (at least column 1, lines 9-27, “The present invention relates generally to a method and apparatus to enable a broadcast listener to automatically purchase a music product such as a record album, cassette tape or compact disk...”);
- c) Receiving purchasing information from said music identification/purchasing system related to said music item (at least column 4, lines 34-48, “These audio segments can be accessed by the potential purchaser to assist in the purchase process and to verify to the caller they are purchasing the music product containing the music piece listened to during the radio broadcast.”);
- d) Transmitting at least one music item selection and payment information to said music identification/purchasing system (at least column 3, lines 3-11, “When the potential purchaser indicates they are ready to order, the automated order system obtains the correct name and shipping address by accessing a name and address database responsive to the consumers telephone number or credit card information. The system also records the consumer’s credit card information and obtains credit authorization. The

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invention then transmits the complete order to the fulfillment warehouse for shipment of the musical product to the purchaser."); and

- e) Receiving said at least one music item selection (at least column 5, lines 21-24, "When the potential purchaser indicates they wish to buy a particular music product the system determines the shipping address and credit authorization and then places the order for the music product with the fulfillment warehouse.").

Referring to claim 2. Pocock further discloses a method for purchasing a recorded music item comprising the step of identifying said music item by comparing the time said music item was recorded with a play list from a designated music station (at least column 3, line 57 to column 4, line 11).

Referring to claim 3. Pocock further discloses a method for purchasing a recorded music item wherein said data includes at least a time, a date, and either a station frequency and a location of said station or a four letter station identification code (at least column 3, line 39 to column 4, line 33).

Referring to claim 5. Pocock further discloses a method for purchasing a recorded music item wherein said data is transmitted to said music identification/purchasing system by means of a telephone (at least Fig. 6).

Referring to claim 11. Pocock further discloses a method for purchasing a recorded music item further comprising the step of identifying said music item (at least column 3, line 39 to column 4, line 33).

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Referring to claim 12. Pocock further discloses a method for purchasing a recorded music item wherein said step of identifying said music item comprises the following steps:

- a) Entering said recorded music item into a central processing unit (at least at least column 2, lines 37-45);
- b) Analyzing and comparing said recorded musical item to music contained in a database (at least column 2, lines 37-45); and
- c) Identifying a music selection providing the closest match to said recorded music (at least column 3, line 57 to column 4, line 11).

Referring to claim 13. Pocock discloses a process of identifying music (at least column 1, lines 9-27, "The present invention relates generally to a method and apparatus to enable a broadcast listener to automatically purchase a music product such as a record album, cassette tape or compact disk...") comprising:

- a) Providing a recorded musical segment (at least column 1, lines 9-27);
- b) Entering said musical segment into a central processing unit (at least column 2, lines 37-45, "It is therefore an object of this invention to provide an automated transaction system to record and track radio audio segments enabling a radio listener to use their telephone to recall and preview, on-demand, music pieces previously broadcasted...");
- c) Analyzing and comparing said musical segment to a database of musical works (at least column 2, lines 37-45);

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- d) Identifying at least one closest match (at least column 3, line 57 to column 4, line 11); and
- e) Generating database information regarding said at least one closest match (at least column 3, line 57 to column 4, line 11).

Referring to claims 14 and 15. Pocock discloses a music identification/purchasing system (at least column 1, lines 9-27, "The present invention relates generally to a method and apparatus to enable a broadcast listener to automatically purchase a music product such as a record album, cassette tape or compact disk...") comprising:

- a) An interface having means for inputting recorded segment of music into a central processing unit (at least column 1, lines 9-27, "...a digitally stored audio database containing the names of musical artists and groups, the names of pieces which have been recorded on the musical products, musical excerpts of these pieces, and a telephone system to replay this descriptive information through a telephone connection to a potential purchaser");
- b) Wherein said central processing unit accesses a database containing music and musical information (at least Figure 7, "Database **7014**"); and
- c) Wherein said segment is compared to said music contained in said database such that said segment can be identified (at least column 1, lines 9-27);

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- d) Such information provided to a user through said interface (at least Abstract); and
- e) A means for purchasing said selected musical work or an item related to said selected musical work (at least column 3, lines 3-11, "When the potential purchaser indicates they are ready to order, the automated order system obtains the correct name and shipping address by accessing a name and address database responsive to the consumers telephone number or credit card information. The system also records the consumer's credit card information and obtains credit authorization. The invention then transmits the complete order to the fulfillment warehouse for shipment of the musical product to the purchaser.").

Referring to claim 16. Pocock further discloses a music identification/purchasing system wherein said means for storing information related to a selected musical work comprises a recording device (at least Figure 7).

Referring to claim 17. Pocock further discloses a music identification/purchasing system wherein said means for identifying said selected musical work comprises a central processing unit accessing a database containing information related to a plurality of musical works (at least Figure 7).

Referring to claim 18. Pocock further discloses a music identification/purchasing system wherein said means for providing information related to said selected musical work comprises a user interface (at least Figure 7).

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Referring to claim 19. Pocock further discloses a music identification/purchasing system wherein said means for purchasing comprises an ordering system including price, availability, shipping method, and payment options (at least column 3, lines 3-11, "When the potential purchaser indicates they are ready to order, the automated order system obtains the correct name and shipping address by accessing a name and address database responsive to the consumers telephone number or credit card information. The system also records the consumer's credit card information and obtains credit authorization. The invention then transmits the complete order to the fulfillment warehouse for shipment of the musical product to the purchaser.").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pocock U.S. Patent No. 6,314,577 in view of Official Notice.

Referring to claims 4, 6, and 8. Pocock discloses a method according to claim 1 as indicated supra. Pocock further discloses a method for purchasing a recorded music item:

- Wherein said data is transmitted to said music identification/purchasing system by means of a communications interface (at least claim 32);

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- Wherein said purchasing information is received by means of a communications interface (at least claim 32); and
- Wherein said step of receiving said at least one music item selection is accomplished over a communications interface (at least claim 32).

Pocock does not expressly disclose a method for purchasing a recorded music item utilizing the Internet. Examiner takes Official Notice that utilizing the Internet does not act to Patentability distinguish the immediate invention. In determining the obviousness of applying what is generally known in the music industry to what is known in the world of the Internet one must determine the level of ordinary skill (*Dann v. Johnston*, 425 U.S. 219, 189 USPQ 257 (1976)). The Internet, to one ordinarily skilled in the art, for some time now is recognized as a vehicle in which information is shared from computer to computer. A typical example would be for one computer to access and download files from another computer located at a different site than the first. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the Internet to transmit information. The desirability to do this is clearly to establish a direct marketing operation enabling the linking of radio stations into a common national market (Pocock: at least column 1, line 30 to column 2, line 24).

Referring to claims 7 and 9. Pocock discloses a method according to claim 1 as indicated supra. Pocock further discloses a method for purchasing a recorded music item:

- Wherein said purchasing information is received by a communications interface (at least claim 32); and

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- Wherein said step of receiving said at least one music item selection is accomplished by a communications interface (at least claim 32).

Pocock does not expressly disclose a method for purchasing a recorded music item utilizing mail. Examiner takes Official Notice that utilizing mail does not act to Patentability distinguish the immediate invention. In determining the obviousness of applying what is generally known in the music industry to what is known in the world of mail one must determine the level of ordinary skill (*Dann v. Johnston*, 425 U.S. 219, 189 USPQ 257 (1976)). The mail, to one ordinarily skilled in the art, for some time now is recognized as a vehicle in which information is shared from location to location. A typical example would be for one individual to access and receive files from another individual located at a different location than the first. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the mail to transmit information. The desirability to do this is clearly to establish a direct marketing operation enabling the linking of radio stations into a common national market (Pocock: at least column 1, line 30 to column 2, line 24).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kaplan, U.S. Patent No. 5,963,916, October 5, 1999; Discloses a network apparatus and method for preview of music products and compilation of market data.

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Wiser et al., U.S. Patent No. 6,385,596, May 7, 2002; Discloses a secure online music distribution system

"Web Radio," Compressed Air, Washington, Jul/Aug 1999, Heather Millar; Discloses the future of internet radio.

"Yahoo to sell downloads," Billboard, New York, September 4, 1999, Catherine Applefeld Olson; Discloses the online distribution of music.

Any inquiry concerning this communication should be directed to Matthew Gart whose telephone number is 703-305-5355. This examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



MSG

December 11, 2002



WYNN W. COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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